

R E M A R K S

Claims 1 - 38 were pending prior to this Amendment.
Claims 35 and 36 have been allowed, and claim 11 indicated as allowable.
Claims 15 - 18 have been canceled.
New claims 39 and 40 have been added.
Claims 1 - 14 and 19 - 40 will be pending after entry of this Amendment.
Claims 1, 5, 9, 12, 19, 21, 23 - 27, 30 and 33 - 40 are independent.

Section 102 Rejections

Claims 1 - 8 and 15 - 26 stand rejected as anticipated by U.S. Patent No. 6,055,513 to Katz. Applicants respectfully traverse the Examiner's Section 102 rejection. Claims 15 - 18 have been canceled.

No "activity rate" in Katz

Remaining claims 1 - 8 and 19 - 26 each recite measuring an activity rate of a point-of-sale terminal(s). For example, one type of activity rate is "the number of completed transactions per time (transaction rate)". Specification, page 6, line 23. Katz does not teach or suggest the claimed feature.

The portions of Katz cited by the Examiner (Col. 9, lines 22 - 42) that refer to a "customer number" have nothing to do with an activity rate. In Katz, a customer number is a unique way to identify a particular customer, much like a social security number.

Specifically, Col. 9, lines 22 - 26 of Katz disclose that a customer number is a type of customer identification data. Such data is person-specific data in that it uniquely identifies the contact with a customer. Other types of person specific data include an e-mail address, billing data or credit card number.

Col. 21, lines 33 - 38 show that customer identification (which is specific to a customer) includes customer number, as well as social security number or any other designator uniquely identifying the user. Col. 21, lines 49 - 54 show a similar notion, in that a *residential* customer number is a geographic descriptor that specifies a particular household or location.

Since Katz does not teach or suggest activity rates at all, much less the claimed step of measuring an activity rate of a point-of-sale terminal(s), Katz does not teach or suggest the invention of claims 1 - 8 and 19 - 26.

Katz does not suggest other claimed limitations involving an activity rate

Claims 1 - 8 recite "*providing a product offer in accordance with the activity rate*". Not only does Katz lack any suggestion of an activity rate, it also does not suggest providing a product offer in accordance with the activity rate. The Examiner refers to Col. 1, lines 32 - 33 as teaching this feature. However, the cited portion discloses only that "after the upsells have been identified, they are offered to the user." Identifying upsells is not the same as an activity rate.

Claims 19 - 22 recite "*determining, based on the activity rate, whether to perform a product offer*". Not only does Katz lack any suggestion of an activity rate, it also does not suggest determining, based on the activity rate, whether to perform a product offer. The Examiner refers to Col. 10, lines 56 - 62; Col. 11, lines 15 - 21; and Col. 24, line 61 - Col. 25, line 4 as teaching this feature. However, the cited portion discloses only that historical factors relating to a specific customer or customer type (not activity) affect upsells. Such historical factors may indicate, e.g., if the customer is unlikely to purchase, if the customer is interested in a certain level of quality, the time of the contact (night or morning), the day of the week or the customer's expected receptiveness to the upsell.

Claims 23 and 24 recite "*determining, based on the activity rate, whether to disable a system for providing a product offer*". Not only does Katz lack any suggestion of an activity rate, it also does not suggest disabling anything, much less disabling a system for providing a product offer. The Examiner refers again to Col. 10, lines 56 - 62; Col. 11, lines 15 - 21; and Col. 24, line 61 - Col. 25, line 4 as teaching this feature, the same portion cited as teaching "*determining, based on the activity rate, whether to perform a product offer*". However, as discussed above, the cited portion discloses only that historical factors relating to a specific customer or customer. Disabling is not suggested by these portions of Katz.

Claims 25 and 26 recite:

*"if the activity rate is less than a predetermined threshold,
determining an upsell in dependence on a purchase,
determining an upsell price in dependence on the purchase, and
offering to exchange the upsell price for the upsell."*

Not only does Katz lack any suggestion of an activity rate, it likewise does not suggest doing anything if the activity rate is less than a predetermined threshold. The Examiner refers to Col. 10, lines 56 - 62; Col. 11, lines 15 - 21; and Col. 24, line 61 - Col. 25, line 4 as teaching this feature. However, as discussed above, the cited portion discloses only that historical factors relating to a specific customer or customer. Neither activity rates nor upsell prices are suggested.

Section 103(a) Rejections

Claims 9 - 14, 27 - 34 and 37 - 38 are rejected as being unpatentable over Katz in view of other references. Applicants respectfully traverse the Examiner's Section 103(a) rejection.

Claim 11 has been rewritten in independent form, in accordance with the Examiner's indication on page 8 of the Office Action that Claim 11 would be allowable. Claim 14, which is an apparatus claim corresponding to claim 11, has also been rewritten in independent form.

No "activity rate" in any of the references

Claims 9 - 14 and 37 - 38 recite "*measuring an activity rate of a point-of-sale terminal*". As discussed above, Katz does not suggest measuring an activity rate of a point-of-sale terminal, much less doing anything based on the activity rate. Accordingly claims 9 - 14 and 37 - 38 are allowable over the references.

Further, claims 37 - 38 recite "*determining an upsell price in dependence on change due from the purchase*". The Examiner contends that Katz discloses "determining an upsell price". However, the cited portions of Katz (Col. 8, lines 56 - 62; Col. 9, lines 2 - 5; and Col. 14, lines 48 - 56) disclose selection of an upsell, not any price of that upsell. Katz does not determine upsell prices, much less determine upsell prices based on anything.

The Examiner further indicates that Burke teaches "determining an upsell price in dependence on change due from a purchase". However, the cited portions of Burke reveal that there are no prices determined in Burke. In Burke, change due is not used to purchase anything, much less upsells. Instead, change is donated or transferred to an account. Thus, Burke cannot suggest "determining an upsell price in dependence on change due from the purchase".

No "override signal" described

Claims 27 - 34 generally recite *providing a product offer in accordance with a received override signal*. Katz does not teach or suggest an override signal, as the Examiner notes on page 8 of the Office Action. The Examiner takes Official Notice that it is well known to provide override button with appropriate access / manager code at a point-of-sale terminal, and at remote terminals connected thereto.

From the Official Notice described on page 8 of the Office Action, Applicants cannot properly determine what such an override signal in the prior art was used for. Accordingly, Applicants cannot precisely describe how the present invention would distinguish over this material since the exact nature of the material is unstated. However, Applicants dispute that any prior art override signals at point-of-sale terminals were used at all in connection with providing a product offer, as recited in claims 27 and 30, or in connection with performance of a supplemental process, as recited in claims 33 and 34. For example, Applicants dispute that there was, in the prior art, any disabling or enabling a system for providing a product offer based on an override signal, as recited in claims 28, 29, 31 and 32.

Accordingly, Applicants request a reference to more describe the official noted subject matter in more detail. MPEP 214.03.

Newly Added Claims

Newly added claims 39 and 40 distinguish over the references, for the reasons given above. In addition, new claims 39 and 40 include many of the limitations of allowed claims 35 and 36, such as:

- measuring an activity rate of a point-of-sale terminal;
- if the activity rate is below a first predetermined threshold, offering a first upsell having an first offer speed;
- if the activity rate is above a second predetermined threshold, offering a second upsell having a second offer speed greater than the first offer speed;

In addition, new claims 39 and 40 further include other limitations, such as:

- the first upsell is for a supplementary product;
- the second upsell is for a supplementary product;
- determining an upsell price in dependence on change due from a purchase;

- exchanging the upsell for the offered upsell price;

Conclusion

For the foregoing reasons it is submitted that all of the claims are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

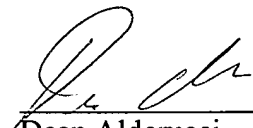
Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Dean Alderucci at telephone number 203-461-7337 or via electronic mail at Alderucci@WalkerDigital.com.

Applicants believe no fee is due. Please charge any additional fees that may be required for this Response, or credit any overpayment to Deposit Account No. 50-0271.

If an extension of time is required, or if an additional extension of time is required in addition to that requested in a petition for an extension of time, please grant a petition for that extension of time which is required to make this Response timely, and please charge any fee for such extension to Deposit Account No. 50-0271.

Respectfully submitted,

June 14, 2001
Date



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**C L A I M A M E N D M E N T S
M A R K E D U P F O R M**

Please **CANCEL** Claims **15 - 18**.

Please **AMEND** Claims **11 and 14** as follows:

11. (AMENDED) A method for controlling the performance of a supplementary process at a point-of-sale terminal, comprising: [The method of claim 10,]
measuring an activity rate of a point-of-sale terminal; and
providing a supplementary product offer in accordance with the activity rate and an offer schedule;
in which the offer schedule comprises a set of supplementary product offers, each supplementary product offer corresponding to a predetermined range of activity rates, and
in which successively time-consuming supplementary product offers correspond to successively greater ranges of activity rates.

14. (AMENDED) An apparatus for controlling the performance of a supplementary process at a point-of-sale terminal, comprising: [The apparatus of claim 13,]
a storage device; and
a processor connected to the storage device,
the storage device storing a program for controlling the processor; and
the processor operative with the program to:
measure an activity rate of a point-of-sale terminal; and
provide a supplementary product offer in accordance with the activity rate and an offer schedule;
in which the offer schedule comprises a set of supplementary product offers, each supplementary product offer corresponding to a predetermined range of activity rates, and
in which successively time-consuming supplementary product offers correspond to successively greater ranges of activity rates.